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CHARGE

DELIVERED TO THE

GRAND JURY

OF THE

COUNTY OF DUBLIN,

AT THE QUARTER SESSIONS of the PEACE
HELD AT KILMAINHAM,

On Tuesday the 9th of January, 1798.

BY ROBERT DAY, ESQ. M. P.

One of his Majesty's Counsel learned in the Law, and Chairman of the said County.

Published at the request of the High Sheriff, Magistrates and Grand Jury.

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1798.

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A CHARGE, &c.

Gentlemen of the Grand Jury,

THE frequent * return of the General Seſſions of the Peace, and of the Commiſſion of Oyer and Terminer,

* The Commiſſion of Oyer and Terminer is held by adjournment four times every year for the County of Dublin; and by the 26 G. 3. 24. it is enacted, "That the Seſſion of the Peace for the City of Dub-"lin and the County of Dublin ſhall not be ad-"journed for any greater length of time, than from "ſix weeks to ſix weeks."

which the wiſdom of our Legiſlature has provided for the preſervation of tranquility and good order in our populous County, hath ſo trained you all in the important truſt of a Grand Juror, that it might ſeem altogether unneceſſary to take up your time by any explanation of it. But this is not a moment for any public man to relax in the diſcharge of duty. At a period ſo portentous and awful, I ſhould fear that my veneration had abated for the great boaſt of Britiſh juriſprudence, the Trial by Jury, or that I had become indifferent and cold to the affecting ſcenes now paſſing in this country, could I diſmiſs you from the box without a few words of reſpectful addreſs.

The knowledge of the Criminal Law and of the adminiſtration of Criminal Juſtice is indiſputably one of the moſt important ſubjects which can employ the

the human underſtanding; for upon the wiſe formation and ſtructure, the enlightened interpretation, and the upright execution of that claſs of Laws, depend the liberty of the nation, as well as the ſafety and happineſs of each individual. In the inveſtigation of this ſubject we naturally lament our departure from the ſimplicity of the ancient Criminal Code, the multiplicity of our ſtatutes, the immenſe catalogue of offences known to our law, and the various and intricate legal queſtions which ariſe upon the application of the law to particular facts and caſes. But this multiplicity and complexity are the indiſpenſible price which a Free People pays for the ſecurity of perſons and property. In an arbitrary Government, the rights of the ſubject are precarious, and the poſitive laws ſimple and few, becauſe the Will of the Tyrant regulates all. But a Nation of Freemen, com-

mercial, populous and refined, can be governed in their tranſactions, protected in their acquirements, and controuled in their exceſſes, only by eſtabliſhed, promulgated and permanent rules; and thoſe rules, and the controverſies ariſing upon their conſtruction, will multiply in proportion to the encreaſing depravity of the times, and to the encreaſe of civil and commercial intercourſe among the inhabitants. But let us for a moment ſee whether for theſe inconveniences, the unavoidable reſult of our improved condition, we ſhall not diſcover abundant conſolation in the pure, the equal and benign diſpenſation of Criminal Juſtice under the Britiſh Conſtitution.

In every Controverſy, that comes before a Court of Law, two queſtions preſent themſelves for inveſtigation--- *quæſtio Juris*, and *quæſtio Facti*; the *Facts*

Facts and circumſtances which form the caſe, and the *Law* which is applicable to thoſe facts. In other countries the offices of deciding the Law and exploring the Facts are united in the ſame Magiſtrate; but it is one of the many happy peculiarities of the Britiſh Law that thoſe two duties, ſo diſtinct in their natures and requiring qualifications ſo very different, are committed to diſtinct and very different deſcriptions of men---the deciſion of the *Law*, to the Judge, who is ſworn " to decide according to the laws of the land;" the deciſion of the *Fact*, to the Jury, who are ſworn " to give a true verdict according to the evidence."

The arduous and important truſt of expounding and interpreting the *Law* is wiſely repoſed by our Conſtitution in men ſelected for their abilities, education and learning; whoſe lives have been ſpent

ſpent in ſtudy, and in the exerciſe of thoſe moral virtues which conciliate public confidence and favour; who combine with unſullied integrity and unſhaken firmneſs, the patient temper and placid manners which exalt the Judicial Character even higher than more ſhining qualities; who, though appointed by the Crown, are no longer the miniſters of arbitrary power, but the independent depoſitaries of the laws and cuſtoms of the realm, declaring them openly and intrepidly without regard to perſon or party; who converſe and conſult together, and by mutual communication preſerve an uniformity of judgments and a conſiſtent adminiſtration of juſtice; and whoſe dignified ſtation and lofty character afford the beſt pledge for the aſſiduous, able and upright diſcharge of their ſacred function.

The office of inveſtigating the * *Facts* and truth of the caſe (to which plain common ſenſe united with integrity are fully competent) is executed in a manner not leſs intitled to general confidence, by *the Country*---not by officers appointed by the Crown, but by a Jury of Fellow-ſubjects;---a mode of Trial ſanctioned by immemorial † antiquity, and calculated above all others to guard againſt error, partiality and perjury.

* That is, ſuppoſing the Facts to be diſputed. But if *they* are agreed upon between the parties, and the *Law* only be diſputed, no Jury is impanelled, and the cauſe is decided by the Judges upon Demurrer—" for matters in law (ſaith Co. Lit. 71. " b.) are decided by the Judges, and matters in " fact by Juries."

† " *Eliguntur in iiſdem conciliis et Principes qui* " *jura per pagos vicoſque reddunt. Centeni ſingulis* " *ex Plebe Comites, conſilium ſimul et auctoritas,* " *adſunt.*" Tacit. *de mori. German.*—Here we diſtinctly diſcover the original of the *Judicium Pariurn*; a Panel of one hundred was returned from among

jury. When twelve ſenſible impartial men, returned by an officer of deep reſponſibility from the vicinage of the tranſaction and of the witneſſes, aided by the authority and experience of a Judge, preſent when the witneſſes are openly and in the face of the world

among the People, who ſat as Aſſeſſors (probably in rotation) with the Judges, both for advice and authority, that mens' lives and fortunes might not depend upon the pleaſure of one man. This form of Judicature, which had not yet attained the preſent perfection of Juries, was the prevailing ſpecies of Trial through the Northern and other nations which adopted the feudal ſyſtem. By degrees however the old Roman Law as tranſmitted by Juſtinian was, upon the revival of letters, adopted in every other part of Europe by the Clergy, who then engroſſed every branch of learning, and this ſeems to have been the principal means of ſuperſeding the Gothic inſtitution of the Trial by Peers. But in England, where the Civil Law was reluctantly and ſparingly admitted, our ſacred Palladium was not only religiouſly preſerved, but gradually improved into its preſent admirable form.—See Reeves and Millar *paſſim*.

ſearched

ſearched and ſifted by the Counſel, the Jury and the Judge, ſhall upon their oaths declare the truth upon controverted facts; no wonder that ſuch a Trial ſhould be pronounced *, " confeſſedly " to be the beſt criterion for inveſti- " gating the truth of facts that ever " was eſtabliſhed in any country." No wonder if ſuch a Trial has begot a ſettled confidence in the public mind, a fond attachment to the Country where juſtice is thus adminiſtered, and a grateful reverence for a Conſtitution which beſtows and ſecures ſo ineſtimable a privilege.

But to ſecure the advanges of this Inſtitution, the diſtinction of *Law* and *Fact* is eſſential, and muſt be inviolably preſerved. " For Juries ſaith

* Black. 385. ſee alſo Hale's Hiſt. Com. Law. 286.

" the *Oracle of our law, are to try the " *Fact*, and the Judges ought to judge " according to *Law*." If the Judge ſhould dictate to the Jury in matters of Fact, he uſurps an office which the Jury have ſworn to diſcharge " accord- " ing to the evidence," he preſumes to decide what each Juror individually is as competent to form a ſound opinion upon as the Judge, and what the twelve collectively are much more competent to decide †.—On the other hand, any encroachment of the Jury upon the

* Co. lit. 226 a.—*Et ſicut ad quæſtionem juris non reſpondent Juratores ſed Judices, ſic ad quæſtionem facti non reſpondent Judices ſed Juratores.*" ibid.— " Judges ſtrictly ſpeaking have no more to do with " matters of fact than the Jurors have with the " judgment of the law." Such is the language of Vaughan, a ſtrenuous advocate for the rights of Juries. Buſhel's caſe 142—5.

† " If the Judge's opinion (ſays Lord Hale) " muſt rule the matter of Fact, the Trial by Jury " would be uſeleſs."

province

province of the Judge would be ſtill more dangerous. The education of unprofeſſional men, even the moſt cultivated, does not qualify them to determine points of law; their deciſions conſequently would fluctuate, and accord with no ſteady or permanent principles; and the Law for want of certainty would ceaſe to be, what it is well defined, "a Rule of Conduct." Thus a gradual loſs of liberty would inevitably follow; for the eſſence of liberty conſiſts in the * certainty of law.—In a word, it is the duty of the Jury to exerciſe their own judgments in matters of Fact,

* *Miſera eſt ſervitus ubi jus eſt vagum et incognitum.* —Beccaria (c. 4.) reaſons well upon the miſeries of a people governed by fluctuating opinions, inſtead of fixed and preciſe law: "Hence we ſee the ſame "crime puniſhed by the ſame tribunal differently "at different times; the conſequence of having "conſulted, not the conſtant and invariable voice "of the law, but the erring inſtability of arbitrary "and unſkilful interpretation."

to receive the Law as it is declared to them by the Judge, and to mould out of both a General Verdict. The conſtitution has appointed the Jury to be the organ for pronouncing the combined reſult of both inveſtigations; expecting that they ſhall therein faithfully incorporate the law, as declared from the Bench, with the facts as found by themſelves *.

Gentlemen, I dwell the longer upon this great boundary between the pro-

* But if the Judge (as ſometimes happens) ſhall for the novelty, intricacy or importance of a legal point ariſing in the Trial heſitate as to the law, or if the Jury ſhall entertain a rational and conſcientious doubt of the law as laid down by the Judge, it then becomes their duty to find a *Special* Verdict, ſtating the facts as they ſtrike their underſtandings in evidence, and referring the law ariſing out of thoſe facts to the Superior Court from which the Record iſſued, where it will be ſolemnly and deliberately decided.

vinces

vinces of the Judge and of the Jury, becauſe among the many novelties of the day it is not the leaſt curious and daring, that men even of profeſſional authority, who ſhould never forget that they are "the miniſters of truth and "juſtice," * have laboured to draw the cognizance of the law from the Bench, and to inveſt the Jury with the deciſion thereof as well as of the fact. We find at various times an uncommon diſplay of ingenuity and eloquence moſt criminally perverted to miſlead Juries upon that important ſubject:—as if by inſpiration they could acquire a competent knowledge of that intricate and complicated ſcience; or were at liberty to exerciſe their own claſhing opinions upon the law, inſtead of being bound to receive it from its proper organ, the preſiding Judge.

Theſe proviſions for the pure and

* Lord Holt's character of a Lawyer.

perfect

perfect adminiſtration of juſtice amongſt us obtain alike in civil and in criminal caſes. But in Criminal proceedings the jealous ſpirit of our Conſtitution hath not left the ſubject to theſe ſafeguards alone. The law, in its mild caution and tender regard to human life and civil liberty, hath not committed the ſubject to a *ſingle* Jury, but exacts a double teſt for the inveſtigation of the truth; requiring the *Accuſation* of a Grand Jury, previous to a *Trial* by a Petit Jury. In *civil* proceedings, the object of which is to diſcuſs the differences, and adjuſt the rights of individuals, the Defendant is, immediately and without previous inquiry, required to anſwer the charge, however groundleſs, of his adverſary. But in *criminal* caſes, where the Defendant is expoſed to corporal puniſhment, the law interpoſes between the Complaint and the Trial a ſolemn Inquiry into

into the nature, motives and evidence of the charge. It would be a hardſhip which the free genius of the Britiſh Conſtitution would not endure, that a ſubject ſhould be expoſed to the diſcredit and danger of a public Trial, whenever any proſecutor thought proper to prefer an accuſation. The ſuperior importance of criminal proceedings, in their nature involving the various denominations, degrees and diſtinctions of offence, and leading to conſequences the moſt momentous to the life, the liberty and good name of man, affords concluſive reaſons for more caution, more deliberation, and more ſolemnity in the inſtitution of a Criminal, than of a Civil proceſs. And therefore the Grand Jury is moſt mercifully ſtationed as a barrier againſt the proſecutions of thoughtleſs levity, vindictive malice, or overbearing power;

a Centinel

a Centinel to challenge and arreſt unjuſt accuſation in the very commencement and firſt ſteps of its march.—But if this two-fold ſecurity be thought neceſſary in all ordinary criminal caſes, where the King in truth is but nominally the proſecutor, how much more important is the inſtitution of a Grand Jury, how happily calculated to guard the liberties of the People, in all proſecutions of a *public* nature, where the Crown or its Goverment may be ſuppoſed to have a perſonal intereſt, and to take an active and perſonal part! The adminiſtration of Criminal juſtice originates in fact with the *People* by means of Grand Juries; the Crown cannot exhibit a capital charge againſt any ſubject without the conſent of the People, that is, without the ſanction of a grand Jury returned from the body of the People. And therefore in times of political heat and difficulty, ſuch

ſuch unfortunately as we now live in, this Inſtitution is admirably contrived to protect the Subject againſt the abuſes of the Executive Power in the proſecution of crimes. While therefore this two-fold barrier of the Conſtitution ſhall ſubſiſt in proper vigour, and criminal judicature remain with the great body of the Nation, no avenue will be open to civil oppreſſion. The intereſts of the State may be ignorantly or corruptly managed; but the People will continue free.

Such, Gentlemen, is the nature of the high truſt to which you are this day called by your country, and which you have ſworn with your beſt ability to diſcharge. The Grand Jury, compoſed of gentlemen of reſpect and property in the County, ſuperior to corruption, to menace, and to every other undue influence, are pledged to

a double duty: to put Guilt, however elevated, in a courſe of Trial; and to ſcreen Innocence, however humble, from unfounded, light or malicious accuſation. You have ſworn, "well and "diligently to inquire, and true pre-"ſentment make;"—that is, to examine with patient attention (the only evidence which you are at liberty to receive) the evidence for the Crown, the nature of the charge, the credit and conſiſtency of the Witneſſes, the character of the Party accuſed; and to *ſatisfy* yourſelves of his guilt, as far as *ex parte* evidence can ſatisfy, before you involve a fellow-ſubject in all the inconveniencies of a public Trial—the certain expence, the poſſible hazard, the incalculable pain of mind, and the inevitable injury to reputation. It is in truth a ſerious and awful ſituation to be brought to that bar polluted by the preſence of many a hardened Criminal.

Reflect

Reflect upon the abaſed and degraded condition of a Culprit, ſtigmatiſed by the ſolemn verdict of a Grand Jury, already half-condemned by the giddy and ſlippant malice of the world, holding up his hand with trembling anxiety in defence of his liberty, his life, his honour! What reparation, what atonement can the deep-wounded ſenſibility of injured Innocence receive for ſuch an outrage? Alas! what an inadequate and ſcanty conſolation even from acquittal!----Perhaps too in the preſent gloomy hour, when every feeling heart is rent with the mingled emotions of indignation, ſhame, and grief; when the proud character of Ireland, once ſo eminent among the nations for every generous virtue, is levelled with the duſt by the poniards of vile conſpirators and midnight murderers; when your Jails are overflowing, and in the general ſweep the

Innocent will ſometimes inevitably be confounded with the Criminal;----at ſuch a time it behoves you moſt perhaps to be upon your guard, to diſcuſs each caſe with more than ordinary circumſpection and calmneſs, to ſuſpect even your own impartiality, and to ſee above all things that you become not the dupes of your public virtue, or of your juſt and natural alarm.---And in juſtice to the Accuſed, and as the beſt and ſureſt means of acquiring a clear underſtanding of each Charge, let me earneſtly recommend to you, at leaſt in all caſes of importance or doubt, to adopt the Engliſh practice of Perſonal Examination. This courſe, which I have invariably adviſed in preference of the imperfect evidence furniſhed by Informations, I now preſs with the greater confidence, as it appears to have been ſtrongly inculcated at the late

late Commiſſion by the high judicial Authority * who there preſided. We know that a Magiſtrate can ſometimes take an Information with as much indifference and flippancy as an ordinary affidavit; though it is his duty to ſift the Accuſer ſtrictly as to the matter of his Information, to receive it from his own lips, and to ſatisfy himſelf thoroughly as to the juſtice and importance of the Charge, before he tranſmit it to the Crown-Office to ground ſo ſerious a proceeding as an Indictment.

If the Magiſtrate allowed the Informant a reaſonable time for reflection, he would return in a fitter and more diſpaſſionate temper and frame of mind for giving evidence in his own caſe; and the Magiſtrate after all might diſcover that there had been

* Downes, J.

ample

ample provocation, and refuſe to arm an inflamed and vindictive accuſer with proceſs againſt the perſon and liberty of a fellow ſubject.

But whilſt I ſtate thus anxiouſly what you owe to the Party Accuſed, let me not be underſtood as wiſhing to create any improper bias in your minds, even on the ſide of mercy. It is your duty to hold an even and ſteady balance between the Public and the Individual; always recollecting that where the Charge is fairly ſubſtantiated by credible *primâ facie* evidence, you have no diſcretion, but are concluded by your oath to find the Bill. "It is the intereſt of the "State that Malefactors ſhould not re-"main unpuniſhed." And ſurely Gentlemen, if ever the ſtrict and rigid execution of that ſound maxim was neceſſary, it is at this portentous period of the country. That a foul and flagitious

ous *Conſpiracy* has for ſome time exiſted in the bowels of this kingdom, in concert with the irreconcileable Enemy of the Empire, to ſubvert our free Government, the ſource of all your comforts and glory, and in its place to ſubſtitute a Democracy, the ſource of all thoſe miſeries which now grind the face of Europe; that this Conſpiracy has attained a degree of ſhape and body of the moſt alarming and formidable maturity; are truths too broad and palpable to be ſeriouſly diſputed. We trace its bloody progreſs from its head-quarters in the Capital through the Kingdom in all the records of the late Circuits. We diſcover that a denomination of Traitors, impudently aſſuming the popular and impoſing appellation of *United Iriſhmen*, have, with a perſeverance that would do honour to a good cauſe, under the flimſy pretence of ſeeking political improvement, propagated

pagated a ſpirit of inſurrection and rebellion from one end of the Iſland to the the other. Such are thoſe evil and perturbed Spirits who confront and brave the public ſcorn, who languiſh and pant in the ſunſhine of a ſettled and well-regulated Government, who hold it "better to reign in Hell than ſerve in Heaven," whoſe paſtime is confuſion, commotion and blood. Until the exiſtence of this execrable confederacy, Ireland was a ſtranger to midnight violence, to pillage, to wanton cowardly cruelty. The public-ſpirited Magiſtrate, after diſcharging his duty to his country, might return to his family, his fire-ſide and domeſtic comforts, in perfect confidence and ſecurity. The virtuous Juror and the honeſt Witneſs might acquit themſelves to God and to their conſciences, without the riſk of being way-laid, or the fear of murder. Committees of aſſaſſination did not exiſt, and meet in the

noon-

noon-day, in the moſt public ſtreets of the capital, applauded and ſtimulated by their blood-thirſty Journaliſts. Individuals were not till then deſignated for the dagger, by name and in print, for no other crime than their virtuous exertions in the ſervice of their Country. Wherever this Conſpiracy advances, plunder, deſolation and death are in its train. The moſt barbarous enormities, perpetrated by their Emiſſaries and Agents, from their frequency and familiarity have ſo hardened the public heart, ſo ſtupified and benumbed our moral ſenſe, as to loſe all power of exciting horror amongſt us. All the crimes of civil ſociety in its ordinary ſtate, thoſe offences which heretofore employed our criminal judicatures, however numerous or flagitious, dwindle to nothing and actually diſappear, in compariſon with the vaſt and awful ſyſtem of atrocity concerted and acted upon by this ferocious Aſſociation

of Conſpirators. And to conſummate and crown this diſaſtrous catalogue of criminality, their bloody rites are gravely and formally opened with a ſolemn Oath of fidelity to this infernal cauſe ---the God of purity and mercy is blaſphemouſly invoked to atteſt, and thus to become an Accomplice in their foul deeds! to be preſent aiding and abetting this Gang of Aſſaſſins in wading through the blood of their fellow ſubjects to the ſubverſion of the State! We read in hiſtory of another celebrated Conſpiracy, not more ſanguinary in its means or deteſtable in its end, commencing with the * ſame monſtrous and incongruous combination of religion and impiety. We re-

* *Catalinam oratione habitâ, cum ad jusjurandum Populares ſceleris ſui adigiret, humani corporis ſanguinem vino permixtum in pateris circumtuliſſe: inde poſt exſecrationem aperuiſe conſilium ſuum; atque eo dictitare feciſſe quo inter ſe magis fidi forent.* Saluſt. Catal. c. 22.

collect

collect alſo, what, though vouched by the grave Hiſtorian and the brilliant Orator who immortaliſe that ſubject, would ſeem incredible, were it not confirmed by the tranſactions of our own time, that in Cataline's Plot there were ſome of the * *Patrician* Order implicated, but maſked in cautious and cowardly concealment; not from any bankruptcy of condition, but goaded by mortified ambition and a diabolical luſt of power; hoping upon the ruins of the old government to erect another of which they looked to be the leaders and managers.---In ſuch a relaxed and disjointed ſtate of things, when the doctrines of the day have multiplied the ſources of deſtruction,

* *Eo convenere Senatorii ordinis P. Lentulus*, &c. —*Erant præterea paulò* occultius *conſilii hujuſce participes Nobiles, quos magis Dominationis ſpes hortabatur, quam inopia aut alia neceſſitudo.* Ibid. c. 17. See alſo *Cicero in Catal. paſſim.*

when the very exiſtence of Society is at ſtake, and your throats and purſes are the avowed aim of the Plot, it becomes neceſſary to cloath juſtice in all its terrors. Public policy, not leſs than conſcience and juſtice, forbid you in this unhappy ſtate of the country to compromiſe with delinquency. When examples are neceſſary to intimidate and controul the wicked, lenity (were it in your diſcretion) would be unſeaſonable, perhaps fatal; it would be cruelty to the State.

But of all the calamities inflicted by this French Faction upon their Country, perhaps the moſt deplorable and deadly is the abuſe and proſtitution of the Preſs. The Liberty of the Preſs conſiſts in this, that every man may write and publiſh what he pleaſes; but he is anſwerable for the matter of his publication, and it is at his peril

ril if he offend. A free and unlicenſed Preſs is eſſential to a free Government; and the extinction of the one would infallibly be followed by the ruin of the other. Let us never grow ſo faſtidious with the vital nutriment and *pabulum* of liberty, as to reject it however nauſeouſly and diſguſtingly it may ſometimes be preſented to us: let us never argue from the abuſe of the thing, to the uſe of it. Whatever corruptions have occaſionally obtained in the Preſs (as what is there in human affairs ſo excellent that is not liable to corruption?) we muſt not forget that to its labours we chiefly owe the deliverance of theſe countries from religious and civil tyranny. As long as it is open to fair, manly and bold diſcuſſion, no people can be enſlaved without their own conſent; no people oppreſſed, who do not conſpire againſt themſelves. The never-ſleeping Watchman

of

of the Conſtitution fails not to ſound the alarm, to hang out the ſignal of an Enemy's approach; ſo that arbitrary power cannot ſteal upon the nation, cannot come unperceived or unawares.——But the Preſs, like the elements of life, like fire, air and water, if not reſtrained from exceſs and confined to proper limits, inſtead of vivifying or adminiſtering to general happineſs ſerves but to conſume and to deſtroy. " The freedom of the Preſs (ſays its ableſt advocate the eloquent Erſkine) " like every other, muſt be limited to " be enjoyed; and like every other hu- " man advantage, may be defeated by " its abuſe." That the Preſs, heretofore the bulwark of our liberties, is in theſe times degraded into a vehicle of defamation, infidelity and treaſon, into a filthy receptacle and ſewer of every thing vile, abominable, and loathſome in ſociety, is a melancholy truth which no

no rational being will deny. We cannot wonder that monſters, who in cold blood, conſpire or abet the aſſaſſination of their innocent fellow-creatures, ſhould exult in the cowardly murder of virtuous reputation. Againſt bold and open violence I can provide---I may repel, avert, or deprecate it; but againſt the poiſon of the lurking Coward, the poniard of the Aſſaſſin, or the keener poniard of the Libeller's pen, what precaution can protect, what courage or ſtrength can defend? When we reflect upon the extravagant licentiouſneſs of the Preſs in this country, ſparing neither ſex, condition or character; vilifying the Executive Authority, conſpicuous for its moderation and humanity, merely for the diſcharge of its primary and moſt indiſpenſable duty---for employing in the protection of the people the great Military Force which they

pay,

pay, when the Civil Power proved utterly incompetent; for ſtanding forward, at the loud call of the Community, in defence of the lives and fortunes of his Majeſty's peaceable, loyal and induſtrious Subjects, againſt a traiterous Banditti, leagued with a foreign Enemy, and by a ſyſtem of rapine and terror preparing the way for its reception---when we ſee the adminiſtration of juſtice degraded in the eyes of the people, and that the Judgment-ſeat (till now held ſacred amongſt us) can no longer protect our mild, virtuous and conſtitutional Diſpenſers of the Law*:—We are at a loſs

* It is impoſſible to forget the late indecent practices reſorted to by the advocates and confederates of *Orr* to diſcredit the verdict in that caſe, and to raiſe a clamour againſt the enlightened and virtuous Judge who refuſed to recommend him for a pardon, and againſt the Chief Governor who ſuffered (as was his duty) the law to take its courſe. To ſolicit a Juror to diſparage or reflect upon or explain

loſs to account why in a Country, where the greateſt Subject cannot with impunity

plain away the Verdict, after the Jury have gone at large and mingled again with the world; to apply to Jurors after being diſcharged, to enter upon a private and *ex parte* examination of witneſſes after a public trial, and thereupon to make affidavits expreſſing regret for their verdict, is a practice of the moſt criminal nature and leading to conſequences the moſt miſchievous. It is to open a wide inlet to corruption, perjury and injuſtice; it is an audacious contempt of the Judge, and of every principle of law and policy. The Jury upon being ſworn, is immediately incloſed and cut off from all external intercourſe; a ſworn bailiff is ſtationed to prevent them from ſpeaking to any perſon without the leave of the Court, and thus to guard them againſt all partial repreſentation, all ſecret ſolicitation and intrigue; but this is a practice which counteracts thoſe precautions ſo wiſely provided to ſecure the reverence due to verdicts, and to uphold the ſacred authority of our Judicatures. It is little leſs than embracery to tamper with Jurors to defeat the effect of their own finding. Indeed ſo chaſte and delicate is our law in

impunity invade the civil rights of the meaneſt and moſt worthleſs, the latter ſhall without interruption aſperſe the honour and reputation of the former. When, under the hollow and lying maſk of *Union*, men labour to *Divide* and embroil the different orders, conditions, and ſects of the nation; to excite the Citizen againſt the Soldier, who protects him in his virtuous induſtry; the emancipated and grateful Catholic againſt the generous Proteſtant, who broke his chains; the People againſt the Legiſlative and Executive Authorities, under whoſe foſtering care we have grown to this towering height of proſperity; and

this reſpect, that even a witneſs who has already been publicly examined ſhall not repeat his evidence privately to the Jury, but if they deſire to hear him again they muſt come back to the box, and reſume the examination openly and in the face of the Court.

finally

finally Ireland againſt the Britiſh Connection;---when we are ſtunned with ſo much profligate nonſenſe about arbitrary power, which in this country exiſts only in the gloomy and crazed imagination of the reſtleſs Republican; at a time when there is but one ſubſtantial ground of terror in the world---one againſt which we ſhould converge every faculty, and "bend up each corporal agent,"---the Demon of Democracy, threatening the earth with its infernal train of incalculable ills;---in a word, when nothing human is ſo intrenched in character, nothing divine ſo ſacred and exalted, as to eſcape the immeaſurable rancour of Libellers; the concluſion is inevitable---that our Preſs is become the indented property of the Enemy, that France has erected and pays for that Preſs in this Country, which ſhe has put down in her own; and our honeſt indigna-

tion is loſt in grief at this debaſement of the brighteſt privilege of liberty, a Free Preſs.

If long experience of the genuine liberty and unparalleled bleſſings which we enjoy cannot cure our political Bedlamites, one might have hoped that the hideous deſpotiſm exerciſed in France upon perſons and property, the utter extinction of the Preſs, the deſtruction of all the talents and virtue of the country even without the formality of Trial, might have opened the eyes of the blindeſt and moſt prejudiced. It might be hoped that the Storm, which has ſhaken Europe to its center and ſhattered it into fragments, might teach them the wiſdom of clinging faſt to the Britiſh Conſtitution, which, like their Oak, forms the ſtrength, while it ſecures the happineſs of the people; that Conſtitution and Connexion, under which

theſe

theſe little ſpecks in the Northern Ocean, ſcarcely diſcernable in the map of the earth, have grown to be the envy and wonder of the world.

But Gentlemen, the Country is not without reſource. The Legiſlature with equal wiſdom and public virtue, hath by the Libel Act committed to Juries the final deciſion of all queſtions of libel or no libel; and the event has fully juſtified this honourable confidence in the impregnable bulwark of our freedom. The event has proved, that Juries, uninfluenced by popular clamour or the moſt impaſſioned inflammation from the Bar, will inveſtigate the ſubject with a conſcientious regard to their oath, and the duty they owe to their King, their Country, and themſelves. The Juries have performed their part boldly and firmly; at no one period of this country

try has juſtice been adminiſtered with more purity, with more perfect indifference to perſons or party.——While Grand and Petit Juries ſhall thus act with a ſteady and diſpaſſionate reſpect for Truth, the laws and conſtitution may yet triumph. Ireland reſting upon the ſacred Volume of her Liberty, may bid defiance to her inſolent ferocious Foe, and with the Aſſertors of Magna Charta exclaim---" we will not ſuffer the Law of England to be diſturbed *."

Gentlemen, I feel that I have treſpaſſed too long upon your indulgence; much longer in truth than I intended. But at ſuch a juncture when ſo much awful matter obtrudes itſelf for obſer-

* That memorable reply is to be found in the Stat. of Merton, c. 9. *et rogaverunt omnes Epiſcopi ut conſentirent, &c.—et omnes Comites et Barones unâ voce reſponderunt, quod* " NOLUNT LEGES ANGLIÆ MUTARE. 2 Inſt. 96.

vation,

vation, the difficulty is to ſelect and to compreſs. I ſhall now relieve you, after expreſſing the ardent prayer of my heart (in which I am ſure of your concurrence,) that the Britiſh Conſtitution moulded by the wiſdom and virtue of ages, cemented by the beſt blood of our Anceſtors, and finally ſettled at the glorious Revolution, may through the energy of our Rulers and the courage and good ſenſe of our Country riſe ſuperior to the wicked machinations of Conſpirators and Traitors, and be tranſmitted unimpaired as a ſacred Inheritance to our lateſt Poſterity.

COUNTY OF DUBLIN QUARTER SESSIONS,

15th January, 1798.

Reſolved, That the Thanks of the GRAND JURY be given to our worthy Chairman ROBERT DAY, Eſq. for his eloquent Charge delivered to us the firſt day of this Seſſion, and that he be requeſted to allow the ſame to be publiſhed.

Reſolved unanimouſly, That the following Addreſs be preſented to him.

TO ROBERT DAY, ESQ. &c. &c. &c.

SIR,

THE Grand Jury of the County of Dublin have heard with unfeigned ſatisfaction, that it is the intention of Government to promote you to the Seat in the Court of King's Bench, vacated by the Reſignation of Mr. Juſtice BOYD; while they la-

ment the loſs of an able and upright Judge, whoſe ſervices have been eminently uſeful to this County, they yet cannot avoid congratulating their Country on the proſpect of your elevation to that Rank and Power, which muſt render your ſuperior Talents ſtill more extenſively beneficial to Society.

For Self and Fellows,

THOS. KENNAN, Foreman.

The Foreman having waited on Mr. DAY with ſaid Reſolutions and Addreſs, received the following

ANSWER.

GENTLEMEN,

I THANK you for this flattering teſtimony of your eſteem. Stamped with your approbation, I ſhall not fear to commit this Charge to the Public; from you it will derive a currency and effect beyond its intrinſic value. In the preſent ſtruggle between order and anarchy, when the Bad have all their functions and active duties, it is important to ſee great and reſpectable Bodies, pledging themſelves intrepidly to a virtuous and manly co-operation; to that activity, energy and zeal which alone can ſave us. In ſuch a criſis Cowardice

Cowardice is but another name for the baſeſt Corruption. Whatever, Gentlemen, my future deſtiny may be, whether to continue to labour for the public, or to retire into the ſhade of private life, I ſhall never ceaſe to cheriſh with a fond and proud remembrance the public indulgence and favour which for nine years has ſuſtained me in the Chair of the moſt reſpectable County of the Kingdom.

ROBERT DAY.

FINIS